

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 28, 2019
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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2018-00029

UBS FINANCIAL SERVICES INC.,
Defendant

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of the Roanoke, Virginia, branch office of UBS Financial Services Inc. ("UBS") (CRD #8174) pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia ("Code").

The Central Registration Depository ("CRD") indicates that UBS (formerly known as PaineWebber) has been registered as a broker-dealer in the Commonwealth of Virginia ("Virginia") since September 22, 1981. In order to offer and sell securities in Virginia, UBS employs registered agents that serve in offices throughout Virginia. The Division specifically reviewed the activity of a former agent previously located at UBS's Roanoke branch.

The Division alleges that at certain times in 2013 through 2014, during the former agent's tenure at UBS, the former agent recommended certain gold and precious metals securities to certain of his clients. After investigating the gold and precious metals investments of the clients of the former agent who made purchases of gold and precious metals during this period, the Division alleges that, as a result of the former agent's recommendations, eighteen clients held or came to hold an overconcentration of said securities when the recommendations were not suitable for some of these clients, in violation of Commission Rule 21 VAC 5-20-280 A 3.

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Based upon its investigation, the Division alleges that UBS violated Commission Rule 21 VAC 5-20-280 A 3 which requires that registrants have reasonable grounds to believe that recommendations to a customer for the purchase, sale or exchange of any security are suitable for the customer. Reasonable grounds shall be based upon the risks associated with the particular security and the information obtained through the diligence and inquiry of the broker-dealer and the agent to ascertain the investor's profile. A customer's profile includes, but is not limited to, the customer's investment objectives, financial situation, risk tolerance and needs, tax status, age, other investments, investment experience, investment time horizon, liquidity needs, and other relevant information known by the broker-dealer and the agent.

If the provisions of the Act are violated, the Commission is authorized by § 13.1-506 of the Act to revoke a defendant's registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1 521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order a defendant to make rescission and restitution, and by § 12.1-15 of the Code to settle matters within its jurisdiction.

UBS has fully cooperated in the Division's investigation and has provided substantial information as a basis for resolution of the Division's regulatory concerns regarding the former agent's recommendations of gold and precious metals securities. UBS neither admits nor denies these allegations but admits to the Commission's jurisdiction and authority to enter this Settlement Order ("Order").

As a proposal to settle all matters arising from these allegations, UBS has made an offer of settlement to the Commission wherein UBS will abide by and comply with the following terms and undertakings:

(1) UBS will offer to pay up to the sum of \$288,970.20 to up to eighteen (18) identified clients of the former agent ("Offerees") and, within one hundred twenty (120) calendar days of the entry of this Order, UBS will:

- (a) Mail an offer letter, within thirty (30) business days of the entry of this Order, to each Offeree after engaging in reasonable best efforts to identify the Offerees' current mailing addresses;
- (b) Provide each Offeree sixty (60) calendar days from the date of the offer letter to accept the payment offered pursuant to this Order. UBS will not be required to pay any Offeree who has not accepted the payment offer within sixty (60) calendar days of the date of the offer letter;
- (c) Identify in each offer letter the relevant payment amount being offered; and
- (d) Inform each Offeree via the offer letter: that the Offeree has sixty (60) calendar days from the date of the offer letter to accept the offer; that an acceptance of the offer must be conveyed in writing to UBS by signing and returning the offer letter; the phone number and e-mail address of a representative of UBS to contact for payment instructions; and the e-mail and phone number of a contact person at the Division.

(2) UBS will have one hundred twenty (120) calendar days after the last payment to clients to submit to the Division the following information:

- (a) The name and address of the Offeree(s), whether the offer was accepted, affirmatively rejected, or deemed rejected due to a failure to locate or timely accept;
- (b) The Offeree(s) name(s), date(s), and amount(s) remitted for each offer;

- (c) Any special circumstances relevant to the offer (i.e., if the original customer is now deceased and payment was remitted to the customer's heirs or estate); and
- (d) The total amount paid to all Virginia residents in connection with the offers required to be made.

(3) UBS will pay to the Treasurer of Virginia the sum of Thirty Thousand Dollars (\$30,000) to cover the cost of investigation pursuant to § 13.1-518 of the Act.

The Division has recommended that the Commission accept UBS's offer of settlement.

NOW THE COMMISSION, having considered the record herein, the offer of settlement by UBS, and the recommendation of the Division, is of the opinion that UBS's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of UBS in settlement of the matter set forth herein is hereby accepted.
- (2) UBS shall fully comply with the aforesaid terms and undertakings of this settlement.
- (3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate on account of UBS's failure to comply with the terms and undertakings of the settlement.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
Ronak V. Patel, Esquire, Winstead PC, 401 Congress Avenue, Suite 2100, Austin, Texas 78701;
Herbert F. Janick, III, Esquire, Sidley Austin, LLP, 85 Exchange Street, Portland, Maine 04100;
Taryn V. Shelton, Esquire, Executive Director, Associate General Counsel, UBS Financial Services Inc., 1000 Harbor Boulevard, 8th Floor, Weehawken, New Jersey 07086; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Securities and Retail Franchising.

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ADMISSION AND CONSENT


UBS Financial Services Inc. ("UBS"), admits to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof and, neither admitting nor denying the allegations made herein by the Division of Securities and Retail Franchising, hereby consents to the form, substance and entry of the foregoing Settlement Order ("Order").

UBS further states that no offer, tender, threat or promise of any kind whatsoever has been made by the Commission or any member, subordinate, employee, agent or representative thereof in consideration of the foregoing Order.

Date:

January 15, 2019

By:


Ilene B. Marquardt, Managing Director
UBS Financial Services Inc.

Seen and Approved By:



Ronak V. Patel, Esquire
Winstead PC



Herb Janick, III, Esquire
Sidley Austin, LLP